



March 16, 2009

Ms. Bernadette McGuire-Rivera
Associate Administrator
Office of Telecommunications
and Information Applications
National Telecommunications
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U.S. Department of Commerce
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Washington, D.C. 20230

Mr. David P. Grahm
Associate General Counsel
U.S. Department of Agriculture
Rural Development
Room 2017
Mail Stop 1423
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Dear Ms. McGuire-Rivera and Mr. Grahm:

In enacting the broadband grant and loan provisions of the American Recovery and Reinvestment Act (ARRA), the President and Congress assigned to the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) both a tremendous responsibility and a momentous opportunity. The opportunity, of course, is to make significant progress toward the goal of ensuring that all Americans have access to high-speed broadband services. The responsibility is to do so in a manner that fulfills the primary goal of the ARRA—the immediate creation of jobs essential to re-invigorating the American economy.

USTelecom represents a broad spectrum of the companies that are already building the nation's broadband infrastructure. USTelecom member companies continue to invest tens of billions of dollars annually to deploy broadband services to unserved areas and upgrade broadband facilities throughout their service areas. Nonetheless, it is widely recognized that there are areas of the country where the costs of providing service will – at least in the foreseeable term – prevent the deployment of broadband services comparable to those available to the majority of Americans. In order to meet the fiduciary duty placed on them by Congress, the President and the American public, the agencies must target broadband stimulus funds toward projects that will *immediately* create jobs and in the reasonably short term provide high-speed broadband.

An essential decision that NTIA must make as soon as possible in this process is identifying the scope of entities that will be allowed to qualify for grants. The broadband provisions of the ARRA provide that, to be eligible for a grant, an applicant must be a state or local government or Indian tribe; a non-profit; or “any other entity, including broadband service or infrastructure provider, that the Assistant Secretary finds *by rule* to be in the public interest.”¹ The goals of this program and the ARRA generally make it essential to include, at a minimum, any private entity that is currently operating a broadband network as eligible to receive funding.

¹ ARRA Section 6001(e)(1) (italics added).

Such companies are particularly well-positioned to fulfill the essential policy goals of the ARRA: immediate job creation leading to new broadband connections as soon as possible. Existing companies are demonstrably qualified to identify the areas where broadband investment is most needed; to have the operational know-how and infrastructure to undertake projects that will lead to the fastest possible creation of jobs; and to have the skills and experience to operate a continuing enterprise to provide broadband services to consumers. Section 6001(e)(1)'s explicit reference to "broadband service or infrastructure provider" confirms Congress' recognition that such companies are well-suited to the furtherance of the Act's goals. The Joint Explanatory Statement's directive that "as many entities as possible be eligible" further supports the inclusion of these companies.

Whatever procedural approach the agency chooses to implement this provision, USTelecom respectfully urges that it inform private companies as soon as possible that they will be eligible, so that those entities can develop sound applications for broadband projects that will best meet program goals. NTIA must clearly define the scope of qualifying entities as early in this funding process as possible, and certainly no later than the issuance of the initial Notice of Funding Availability. It is important that all potential applicants know at the outset the rules of eligibility or else some entities may be advantaged over others to the detriment of the goals of the ARRA.

A second key issue is to quickly provide guidance on how the statutory terms "unserved" and "underserved" will be defined. In doing so, the agency should focus on program-specific definitions based on the particular economic stimulus and broadband deployment goals of the ARRA. Specifically, in defining these terms, NTIA should focus on whether a broadband connection is available and whether that connection is sufficiently robust to provide full participation in today's Internet world. Those definitions should not relate to the number of providers operating in a given area. The U.S. already surpasses all other countries in the breadth and depth of our competing broadband networks. Experience with other governmental programs clearly demonstrates that funding focused on adding networks rather than on adding new consumer connections is likely to result in program expenditures that do little or nothing to increase the number of consumers on the network.

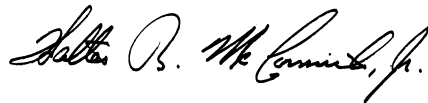
The key broadband goal of this program is to create the opportunity for those who cannot fully participate in today's broadband world to do so through reliable broadband connections that fully enable, for example, work at home and distance learning applications as well as file uploads and downloads. Consistent with this goal, and taking into consideration the overall goals of the ARRA, NTIA should give the highest consideration to proposals that will deliver the most "bang for the buck" in terms of efficiently creating the ability for consumers that currently cannot reap the benefits of a full array of Internet-based applications and services to do so. This approach will stretch scarce dollars as far as possible in order to close broadband gaps and yield the greatest benefit by maximizing new participants in the broadband world.

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Third, the agencies must not lose sight of the first and foremost goal of the ARRA—job creation and near-term economic stimulus. The agencies must minimize red tape and avoid being drawn into the intricacies of various public policy debates that are simply not essential to its primary job of getting the broadband stimulus funds out and working in the economy. For example, the non-discrimination and interconnection provisions of the ARRA should be interpreted to mean the Federal Communications Commission's (FCC) Internet Policy Statement. The agencies should not try to impose other requirements on grantees as part of this process. Broadband service providers and subscribers have experience with the FCC's Internet Policy Statement, which has successfully balanced the interests of consumers and providers of broadband content, applications and services since 2005. Although debates about the Policy Statement will continue, consideration of the exceedingly complex issues involved within a process that must necessarily be very compressed risks creating significant delay and injecting substantial uncertainty into a program that should be focused on translating stimulus dollars into jobs and broadband connections as quickly as possible.

On behalf of USTelecom's member companies, I want to express my appreciation of the challenges facing NTIA and RUS as they undertake this effort critical to revitalizing the U.S. economy and setting the stage for universal broadband. We look forward to working with you as this important process unfolds.

Sincerely,



Walter B. McCormick, Jr.

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